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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/26/2001

Michael F. Krieger

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11/22/2006

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EXAMINER

BROWN, CHRISTOPHER J

ART UNIT

PAPER NUMBER

2134

DATE MAILED: 11/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/963,867	Applicant(s) KRIEGER, MICHAEL F.	
	Examiner Christopher J. Brown	Art Unit 2134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 9-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5 and 9-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Request for Continued Examination has been received and accepted.

Response to Arguments

1. Applicant's arguments filed 9/11/2006 have been fully considered but they are not persuasive. The applicant argues that US 6,035,403 Subbiah does not teach an independent software interface capable of being imposed on an operating system or individual software application. The applicant cites Subbiah for reasoning that the interface is inseparable from a software application. The examiner argues that Subbiah does teach an independent software interface in that the software interface may be integrated with any program purchased from the vendor. Operating systems and individual software applications may be purchased from a vendor where Subbiah's teaching may impose the interface.

Applicant has argued that Subbiah teaches away from the US 6,748,540 Canestaro reference with regards to claim 5. The applicant argues that Subbiah teaches that it is not possible that the biometric signal is stored past the comparison stage. The examiner argues that no reference to biometric signal storage is made in Subbiah. The applicant cites Column 5 lines 26-32, which says "the process ends". This does not teach away from storage of the biometric signal. This "process" refers to the comparison process of biometric signals.

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Furthermore to teach away, the reference would need to state that storage of the biometric signal could not be done. This is not the case.

Applicant has argued that the USC 112 rejections have been overcome by the elimination of the offending language. This does not appear to be the case. The USC 112 paragraph rejections stand.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3, 5 and 9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As per claims 1-3 the instant specification says only that “the software interface is utilized to present access to a software application”, it does not state that it is an “independent” software interface. Correction is required.

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As per claims 3, and 5 the instant specification does not state that the software interface controls network access, the specification only states controlling access to an operating system or application program.

As per claim 9, the instant specification does not state that the software interface sends a message to a user of the software interface.

Claims dependent on rejected independent claims 1-3 are also rejected.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined

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under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Subbiah US 6,035,403.

As per claim 1, Subbiah teaches a biometric signal acquisition module located on a computer input device, (capturing device). (Col5 lines 20-25). Subbiah teaches that the input device may obtain the biometric signal of a user in control of the computer input device (captured fingerprint information), (Col 5 lines 20-25). Subbiah teaches an independent software interface capable of being imposed on an operating system or on an individual software application, for comparing the acquired biometric signal to a collection of authorized signals to determine if the individual controlling the computer input device is authorized to access the operating system or software application, (embeds biometric information in each independent program, interface authenticates user), (Col 5 lines 8-25). Subbiah teaches the software interface controls access to the operating system or software application based on a comparison of the acquired biometric signal to the collection of authorized signals (before installation asks for biometric input and compares fingerprint data to verify access), (Col 5 lines 10-33).

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As per claim 2, **Subbiah** teaches an independent software interface capable of being imposed on an operating system or on an individual software application, (embeds biometric information in each independent program), (Col 5 lines 8-15). Subbiah teaches obtaining baseline biometric signal from an authorized user through interface (initial fingerprint), (Col 5 lines 10-15). Subbiah teaches obtaining through biometric acquisition module a current biometric signal from an individual controlling the computer input device, (fingerprint), (Col 5 lines 20-25). Subbiah teaches comparing the current biometric signal with the baseline signal to determine authorization (determine if data matches) (Col 5 lines 25-30). Subbiah teaches controlling access based on said comparison, (access is allowed or denied.) (Col 5 lines 31-33).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, is rejected under 35 U.S.C. 103(a) as being unpatentable over

Subbiah US 6,035,403 in view of Matchett US 5,229,764.

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As per claim 3, Subbiah teaches an independent software interface capable of being imposed on an operating system or on an individual software application, (embeds biometric information in each independent program), (Col 5 lines 8-15). Subbiah teaches obtaining baseline biometric signal from authorized users through interface (fingerprints), (Col 5 lines 10-15, 45-53). Subbiah teaches obtaining through biometric acquisition module a current biometric signal from an individual controlling the computer input device, (fingerprint), (Col 5 lines 20-25). Subbiah teaches comparing the current biometric signal with the baseline signal to determine authorization (determine if data matches) (Col 5 lines 25-30). Subbiah teaches controlling access based on said comparison, (access is allowed or denied.) (Col 5 lines 31-33). Subbiah does not teach controlling access to the network with the software interface.

Matchett teaches using biometrics to gain access to a network, (random biometric authentication including control of network access)(Col 3 lines 10-15, 35-40 Col 8 lines 8-11).

It would have been obvious to one of ordinary skill in the art to combine the biometric system of Subbiah with the network access system of Matchett, because the biometrics would enhance network security.

Claims 5, is rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah US 6,035,403 in view of Matchett US 5,229,764 in view of Kinsella US 6,947,580 in view of Canestaro US 6,748,540.

As per claim 5, the Subbiah-Matchett teaches biometric network access control but does not disclose reporting unauthorized access attempts, keeping a biometric signal beyond the time necessary for the steps of comparison, or providing a biometric signal to the manager of the network.

Kinsella teaches storing the acquired biometric signal for a period of time longer than that necessary to compare the acquired biometric signal to the collections of authorized signals to permit identification of the individual who inappropriately attempted to access the operating system or software application (audit log that identifies the individual attempting to user the software, including a fingerprint scan) (Col 10 lines 5-10).

It would have been obvious to one of ordinary skill in the art to use the log of Kinsella with the authentication system of Subbiah-Matchett because it allows an ability to detect internal fraud or other unauthorized people.

Canestaro teaches reporting a failed access attempts to managers of the network (administrators), (Col 2 lines 12-18, Col 7 lines 7-10). It would be obvious to one of ordinary skill in the art to use Canestaro's reporting failed access attempts with the logs of Kinsella and the biometric control system of Subbiah-Matchett because it would be advantageous to have an improved method for monitoring

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unauthorized access attempts to a computer system for administrators, (Col 2 lines 1-10 Canestaro).

Claims 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah US 6,035,403 in view of Stevens US 7,013,393.

As per claims 9, and 11, Subbiah does not teach notifying the user of inappropriate access attempts.

Stevens teaches notifying the user of an inappropriate access attempt (notifies user of incorrect match, updates fraud database) (Col 11 lines 25-35). It would have been obvious to one of ordinary skill in the art to modify the access system of Subbiah with the reporting of Stevens because it makes the user aware that they may only have limited remaining chances for an appropriate login.

Claims 10, and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Subbiah US 6,035,403 in view of Kinsella US 6,947,580.

As per claims 10, and 12 Subbiah does not teach storing the acquired biometric signal for a period of time longer than that necessary to compare the acquired biometric signal to the collections of authorized signals to permit identification of the individual who inappropriately attempted to access the operating system or software application.

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Kinsella teaches storing the acquired biometric signal for a period of time longer than that necessary to compare the acquired biometric signal to the collections of authorized signals to permit identification of the individual who inappropriately attempted to access the operating system or software application (audit log that identifies the individual attempting to user the software) (Col 10 lines 5-10).

It would have been obvious to one of ordinary skill in the art to use the log of Kinsella with the authentication system of Subbiah because it allows an ability to detect internal fraud or other unauthorized people.

As per claim 13, Subbiah does not teach using the stored current biometric signal to identify the individual attempting to use operating system or software application.

Kinsella teaches using the stored current biometric signal to identify the individual attempting to use operating system or software application, (identifying information matched to user in user storage), (Col 10 lines 13-20).

As per claim 14, Subbiah does not teach using the identification of the individual attempting to use the operating system of software application to determine the access habits of the individual attempting to use the operating system or software application.

Kinsella teaches using the identification of the individual attempting to use the operating system of software application to determine the access habits of the

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individual attempting to use the operating system or software application
(authorized and unauthorized use monitoring by log) (Col 10 lines 23-28).

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Brown whose telephone number is (571)272-3833. The examiner can normally be reached on 8:30-6:00.

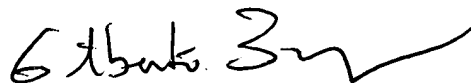
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on (571)272-6962. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher J. Brown



11/14/06



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